

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

DOLORES J. MURPHY, as Trustee of the
CHARLES M. MURPHY
ADMINISTRATIVE TRUST,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1:24-cv-00260-KES-BAM

**[PROPOSED] ORDER RE STIPULATION
TO CONTINUE JOINT SCHEDULING
REPORT DEADLINE AND
MANDATORY SCHEDULING
CONFERENCE (ECF NOS. 40, 41)**

Plaintiff Dolores J. Murphy, as Trustee of the Charles M. Murphy Administrative Trust (the “Administrative Trust”), initiated this suit for refund of tax/civil penalties against Defendant, the United States of America, on February 29, 2024. (ECF No. 1). Defendant the United States of America’s Answer or other responsive pleading in this case was due on August 5, 2024. The initial mandatory scheduling conference is currently scheduled for September 16, 2025. (ECF No. 40).

On August 5, 2024, Defendant United States filed a Notice of Motion to Dismiss (ECF No. 17), United States' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Memorandum in Support (ECF No. 17-1), (hereinafter referred to as "Defendant United States' Motion to Dismiss"), and Declaration of Brian D. Johnson in Support of the United States' Motion to Dismiss (ECF No. 17-2).

On August 19, 2024, counsel for Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, filed Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 19) and Declaration of Craig A. Houghton in

1 Support of Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P.
2 12(b)(1) and 12(b)(6) (ECF No. 19-1).

3 On August 22, 2024, the Court filed a Minute Order (ECF No. 20) ordering Robert C.
4 Bombard to file a declaration detailing the parties' meet and confer efforts prior to the filing of
5 Defendant United States Motion to Dismiss and Supporting Memorandum and Declaration.

6 On August 26, 2024, Robert C. Bombard filed the Declaration of Robert C. Bombard (ECF
7 No. 21) pursuant to the Court's August 22, 2024, Minute Order (ECF No. 20).

8 On August 28, 2024, Defendant United States filed United States' Reply to Plaintiff's
9 Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)
10 (ECF No. 22).

11 On August 30, 2024, Connor J. Pestovich filed a Notice of Appearance in this case (ECF
12 No. 23) with the Court to cover this case for Robert C. Bombard during his upcoming family leave
13 for several months. In early December of 2024 Mr. Bombard returned from his family leave and
14 resumed the role as lead counsel for Defendant United States in this case,

15 Per Minute Orders filed by the Court on September 16, 2024, and September 18, 2024,
16 (ECF Nos. 24 and 25), the Court set the hearing on Defendant United States' Motion to Dismiss
17 for November 4, 2024. The hearing on Defendant United States' Motion to Dismiss was held and
18 argued before the Honorable Kirk E. Sherriff on November 4, 2024. After the hearing, the Court
19 filed a Minute Order (ECF No. 27) allowing Plaintiff Dolores J. Murphy, as Trustee of the
20 Administrative Trust, to file a supplemental memorandum of points and authorities in support of
21 Plaintiff's Opposition to Defendant United States' Motion to Dismiss and Supporting Declaration
22 by November 4, 2024, and Defendant United States to file a reply thereto by November 25, 2024,
23 and to then take the matter under submission.

24 On November 4, 2024, Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust,
25 filed her Supplemental Memorandum of Points and Authorities Regarding the Proper
26 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and
27 6651(a)(2) (ECF No. 28).

28 On November 25, 2024, Defendant United States filed United States' Response to

1 Plaintiff's Supplemental Memorandum of Points and Authorities Regarding the Proper
 2 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and
 3 6651(a)(2) (ECF No. 29).

4 On January 13, 2025, the parties filed a Stipulation to Continue Joint Scheduling Report
 5 Deadline and Mandatory Scheduling Conference (ECF No. 30) stipulating to a continuance of the
 6 mandatory scheduling conference by ninety (90) days. On January 14, 2025, the Court issued an
 7 Order Re Stipulation to Continue Joint Scheduling Report Deadline and Mandatory Scheduling
 8 Conference (ECF No. 31) granting that stipulation and set the mandatory scheduling conference
 9 for April 21, 2025.

10 On February 18, 2025, the Court issued an Order Denying in Part and Granting in Part
 11 Defendant's Motion to Dismiss (ECF No. 32).

12 On March 4, 2025, Defendant United States filed United States' Answer to the Complaint
 13 (ECF No. 33).

14 On March 18, 2025, Robert C. Bombard, former lead counsel for Defendant United States
 15 in this case, filed a Notice of Withdrawal of Robert C. Bombard (ECF No. 34) notifying the Court
 16 that he will be temporarily detailed to another component of the Department of Justice for a period
 17 of six month that will not permit him to work on his Tax Division cases for the duration of the
 18 detail, and that Connor J. Pestovich, another Trial Attorney with the Tax Division who has
 19 appeared for Defendant United States in this case (ECF No. 23), will become new lead counsel for
 20 Defendant United States in this case.

21 The parties have proffered that in late February and early March of 2025, counsel for
 22 Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, and Mr. Bombard, as former
 23 lead counsel for Defendant United States, exchanged e-mail messages regarding both a proposed
 24 settlement recommendation of this case by Defendant United States and Plaintiff Dolores J.
 25 Murphy's, as Trustee of the Administrative Trust, questions and response thereto and position
 26 regarding the merits of Plaintiff's case and a possible basis of settlement of this case.

27 The parties have also proffered that on April 4, 2025, counsel for Plaintiff Dolores J.
 28 Murphy, as Trustee of the Administrative Trust, and Mr. Pestovich, as new lead counsel for

1 Defendant United States, continued settlement discussions regarding this case, including an
 2 alternate settlement proposal of this case by Plaintiff Dolores J. Murphy, as Trustee of the
 3 Administrative Trust.

4 On April 10, 2025, counsel for the parties filed a Stipulation to Continue Joint Scheduling
 5 Report Deadline and Mandatory Scheduling Conference (ECF No. 35), stipulating to a
 6 continuance of the mandatory scheduling conference by thirty (30) days to May 21, 2025, or such
 7 other date as may be determined by the Court. Counsel for the parties agreed to this stipulation
 8 because Defendant United States' current counsel of record needed additional time to review the
 9 case's files, filings, and history to help meaningfully develop a discovery plan as well as to
 10 explore the possibility of resolving this case without further litigation, including the alternate
 11 settlement proposal of this case made by Plaintiff Dolores J. Murphy, as Trustee of the
 12 Administrative Trust, on April 4, 2025. The Court granted the parties' April 4, 2025, request on
 13 April 11, 2025, continuing the mandatory scheduling conference to May 28, 2025, and the joint
 14 scheduling report deadline to May 21, 2025.

15 The parties have proffered that counsel for Plaintiff Dolores J. Murphy, as Trustee of the
 16 Administrative Trust, and Mr. Pestovich, as new lead counsel for Defendant United States, have
 17 continued settlement discussions, including exchanging multiple e-mails messages and having
 18 multiple telephone calls between May 15–19, 2025. The parties have proffered that during these
 19 telephone calls and in these e-mail messages, counsel for Defendant United States has provided an
 20 alternate settlement recommendation to counsel for Plaintiff Dolores J. Murphy, as Trustee of the
 21 Administrative Trust ("Defendant United States 05/16/2025 Alternate Settlement
 22 Recommendation"), which counsel for the parties have discussed and evaluated. The parties have
 23 proffered that, subject to further discussions and calculations, there may be a basis for settlement
 24 based on Defendant United States' 05/16/2025 Alternate Settlement Recommendation, but that
 25 they needed further time to fully discuss and investigate this possibility.

26 On May 20, 2025, counsel for the parties filed a Joint Status Report and Stipulation to
 27 Continue Joint Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No. 37),
 28 providing the Court with an update on the status of their settlement discussions in this case and

1 stipulating to a continuance of the mandatory scheduling conference by fifty (50) days to July 17,
 2 2025, or such other date as may be determined by the Court, to give the parties sufficient time to
 3 obtain and review the IRS's calculations relating to Defendant United States' 05/16/2025
 4 Alternate Settlement Recommendation and continue to meet and confer to determine whether a
 5 basis of settlement of this case can be agreed upon by the parties and then file a further joint status
 6 report with the Court. The Court granted the parties' May 20, 2025, request on May 22, 2025,
 7 continuing the Mandatory Scheduling Conference set for May 28, 2025, to July 16, 2025. (ECF
 8 No. 38).

9 The parties have proffered that counsel for Defendant United States continued to attempt in
 10 good faith to obtain the calculations from the IRS related to the United States' 05/16/2025
 11 Alternate Settlement Recommendation. However, since counsel for Defendant United States had
 12 not received these calculations from the IRS due to confusion at the IRS about who should be
 13 preparing these calculations, and the parties need for the IRS's calculations to properly evaluate
 14 Defendant United States' 05/16/2025 Alternate Settlement Recommendation, on July 9, 2025,
 15 counsel for the parties filed a Joint Status Report and Stipulation to Continue Joint Scheduling
 16 Report Deadline and Mandatory Scheduling Conference (ECF No. 39), providing the Court with
 17 an update on the status of their settlement discussions in this case and stipulating to a continuance
 18 of the mandatory scheduling conference by sixty-two (62) days to September 16, 2025, or such
 19 other date as may be determined by the Court, to give the parties sufficient time to obtain and
 20 review the IRS's calculations relating to Defendant United States' 05/16/2025 Alternate
 21 Settlement Recommendation and continue to meet and confer to determine whether a basis of
 22 settlement of this case can be agreed upon by the parties and then file a further joint status report
 23 with the Court. The Court granted the parties' July 7, 2025, request on July 10, 2025, continuing
 24 the Mandatory Scheduling Conference set for July 16, 2025, to September 16, 2025. (ECF No.
 25 40).

26 The parties have proffered that on September 8, 2025, counsel for Defendant United States
 27 received calculations from the IRS complex interest group related to the United States' 05/16/2025
 28 Alternate Settlement Recommendation, which calculations counsel for Defendant United States

1 sent to counsel for Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, on
 2 September 8, 2025, for his review and consideration. The parties have proffered that counsel for
 3 the parties exchanged e-mail messages and had two telephone conversations on September 8,
 4 2025, during which they discussed United States' 05/16/2025 Alternate Settlement
 5 Recommendation and the IRS's calculations related thereto. The parties have proffered that as a
 6 result of these efforts, counsel for the parties agreed that counsel for Defendant United States
 7 should prepare and send to counsel for Plaintiff Dolores J. Murphy, as Trustee of the
 8 Administrative Trust, a settlement offer acknowledgement letter that includes a revised version of
 9 Defendant United States' 05/16/2025 Alternate Settlement Recommendation as agreed to by
 10 counsel for the parties on September 8, 2025, (the "Settlement Offer Acknowledgement Letter")
 11 for approval by Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, and her
 12 counsel.

13 The parties have proffered that the settlement offer by Plaintiff Dolores J. Murphy, as
 14 Trustee of the Administrative Trust, that will be contained in the Settlement Offer
 15 Acknowledgement Letter, once approved and signed by Plaintiff Dolores J. Murphy, as Trustee of
 16 the Administrative Trust, and her counsel, will need to be processed in accordance with the
 17 Department of Justice's usual settlement procedure, which includes the preparation of a
 18 recommendation of such settlement offer by counsel for Defendant United States that will be
 19 forwarded with the Settlement Offer Acknowledgement Letter to the authorized delegate of the
 20 Attorney General of the United States for their review and approval.

21 On September 9, 2025, counsel for the parties filed a Stipulation to Continue Joint
 22 Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No. 41), stipulating to a
 23 continuance of the mandatory scheduling conference by fifty-six (56) days to November 11, 2025,
 24 or such other date as may be determined by the Court, to allow counsel for Defendant United
 25 States to seek the approval of the settlement offer by Plaintiff Dolores J. Murphy, as Trustee of the
 26 Administrative Trust, that will be contained in the Settlement Offer Acknowledgement Letter by
 27 the authorized delegate of the Attorney General of the United States. Counsel for Defendant
 28 United States expects a final decision on the Settlement Offer Acknowledgement Letter from the

1 authorized delegate of the Attorney General of the United States by October 8, 2025.

2 Given the parties' progress toward the settlement of this case without the need for trial or
3 further discovery, it is appropriate to continue the Mandatory Scheduling Conference and
4 associated deadline for the parties to file a joint scheduling report with the Court to save the Court
5 and the parties the time and expense of preparing for the Mandatory Scheduling Conference while
6 the counsel for Defendant United States seeks the approval of Plaintiff's settlement offer set forth
7 in the Settlement Offer Acknowledgement Letter by the authorized delegate of the Attorney
8 General of the United States which would make this hearing unnecessary.

9 The Court finds that good cause exists to grant the requested extension of the mandatory
10 scheduling conference in this case.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The Mandatory Scheduling Conference currently set for September 16, 2025, is
13 continued to **November 13, 2025, at 9:30 AM in courtroom 8 (BAM) before Magistrate Judge**
14 **Barbara A. McAuliffe**. The parties shall appear at the conference remotely via Zoom video
15 conference. The parties will be provided with the Zoom ID and password by the Courtroom
16 Deputy prior to the conference. The Zoom ID number and password are confidential and are not to
17 be shared. Appropriate court attire required; and

18 2. The parties shall file a joint scheduling report seven (7) days prior to the scheduling
19 conference.

20 The Court permits this continuance in the interest of justice, but endless continuances will
21 not be permitted.

22 IT IS SO ORDERED.

23 Dated: September 10, 2025

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE